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KATTEN MUCHIN ROSENMAN LLP			MOONEYHAM, JANICE A	
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3629

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/828,437	PATULLO ET AL.	
	Examiner	Art Unit	
	Janice A. Mooneyham	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005 and 25 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to the applicant's communications filed on September 2, 2005 and October 25, 2005, wherein:

Claims 1-28 are currently pending;

Claim 21 has been amended;

Claim 28 is newly added.

Claim Rejections - 35 USC § 112

2. The rejection under 35 U.S.C. 112, second paragraph, is hereby ***withdrawn***.

Claim Rejections - 35 USC § 101

3. The rejection under 35 U.S.C. 101 is hereby withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-10 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynch et al (6,018,715) (hereinafter referred to as Lynch).

Referring to Claim 1:

Lynch discloses a reservation system for making travel arrangements upon request by a user, the system comprising:

means for determining whether the user is a direct is a direct customer or a travel agent (*Figure 1 Decision Engine (16) Fig. 3 (106) Determine traveler,*

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Business Entity and Agency Association, column 5, lines 31-35 – at block 106, in response to the travel request information, system 10 under the control of decision engine module 16 determines the identity of the traveler, the business entity which employs the traveler (if applicable), and the travel agency of which the individual is a customer (if applicable));

means for receiving travel parameters associated with a desired travel option (Figure 1 (10); system 10 receives information relating to an incoming travel request col. 4, lines 13-14; Figure 2-workstation 34 – a user of system 10, such as a travel agent, may input and receive travel and customer related information through any workstation (34), col. 4, lines 57-61).

means for generating a listing of one or more travel arrangements in accordance with the travel parameters (Decision engine module (16) - col. 3, lines 16-21 Decision engine module 16 functions to receive travel request information, such as a travel itinerary, input into system 10 and, in response, determines a preferred travel plan); and

means for displaying the listing of one or more travel arrangements (Figure 2 - workstation 34; col. 4, lines 57-61 a user of system 10 may input and receive travel and customer related information, including the travel plan generated by system 10)

Referring to 2, 4-6, and 11:

Lynch discloses travel parameters as set forth in claims 4 and 11 (Travel Request Information Fig. 3 (104)) which includes time and dates of travel and types of services needed, col. 4, lines 13-18; col. 5, lines 25-29 the travel request information can include, for example, the name of a customer (individual and/or business entity), the time and dates of travel and types of travel services needed (e.g., airline flight, hotel automobile rental, etc.).

While Lynch discloses the travel request information including, for example, the name of a customer (individual and/or business entity), the time and dates of travel and types of travel services needed (e.g., airline flight, hotel automobile rental, etc.), Lynch does not explicitly disclose a system wherein the listing includes a plurality of room accommodations and pricing information, wherein said listing includes information relating to whether children are allowed, wherein said listing indicates unavailability information, or wherein pricing information is provided. However, this data is determined to be non-functional descriptive data, not functionally interrelated with the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, an apparatus must be distinguished from the prior art in terms of structure rather than function alone (MPEP 2114). The system in Lynch is fully capable of processing and displaying this type of data as is indicated by the language "*the travel*

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request information can include, for example," and the *etc.* at the end of the listing of services, indicating that the listing is not all inclusive.

Referring to Claims 3 and 8-10:

Lynch discloses a means for displaying (workstation 34).

The fact that the means for displaying displays images associated with a plurality of room accommodations or flight options, or an indication of a limited flight availability is data that is deemed non-functional descriptive data, not functionally interrelated with the structure. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, an apparatus must be distinguished from the prior art in terms of structure rather than function alone (MPEP 2114). The system of Lynch is fully capable of displaying images and flight options in the travel plan that the system 10 generates.

Referring to Claim 7:

Lynch discloses a system further including a means for accessing an associated computer network (Figure 2; col. 4, lines 25-65 - the mainframe computer 30 may be linked electronically to process server 26 through a local or wide area network (LAN/WAN).

Referring to Claim 12:

Lynch discloses a reservation system including means for generating a confirmed travel arrangement without receipt of payment for the arrangement (*col. 3, lines 16-21 decision engine module 16 functions to receive travel request information,*

such as travel itinerary, input into system 10 and, in response determines a preferred travel plan col. 4, lines 13-24 – system 10 determines a recommended travel plan or policy that balances between the preferences of the individual traveler).

Referring to Claim 25:

Lynch discloses a reservation system making travel arrangements comprising:
first data processing system (*Processing network 12*) for determining whether the user is a direct customer or a travel agent ((*Figure 1 Decision Engine (16) Fig. 3 (106) Determine traveler, Business Entity and Agency Association, column 5, lines 31-35 – at block 106, in response to the travel request information, system 10 under the control of decision engine module 16 determines the identity of the traveler, the business entity which employs the traveler (if applicable), and the travel agency of which the individual is a customer (if applicable); receiving travel parameters associated with a desired travel option and generating a listing in accordance with the parameters and displaying the listing of the one or more travel arrangements (col. 3, lines 12-21 decision engine module 16 functions to receive travel request information, such as travel itinerary, input into system 10 and, in response determines a preferred travel plan; col. 4, lines 57-61 a user of system 10 may input and receive travel and customer related information (including the travel plan generated by the system 10 through any of the workstations 34); and*

at least one database (*Figure 1 (14) and col. 3, lines 31-37 and data storage device 28 col. 4, line 66 thru col. 5, line 7*). The language *for storing a plurality of the travel arrangements and the associated pricing information* is the intended use of the

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structure and does not distinguish the claimed apparatus from the prior art since the databases of Lynch store information relating to travel preferences and are fully capable of storing travel arrangements and pricing information.

Referring to Claim 26 and 27:

Lynch discloses a system comprising a polling computer (Figure 1 and (10) and col. 3, lines 6-30 automated travel planning system 10 includes a processing network 12 connected to a database 14 processing network 12 may consist of a single processor or, as described below with reference to Figure 2, a plurality of interconnected processors; processing network 12 functions to run one or more software applications or modules which can include a decision engine module 16 – decision engine module 16 functions to receive travel request information input into system 10 and, in response, determines a preferred travel plan for each traveler) for polling a first data processing system to transfer travel arrangement information (preferred travel plan) to a second data processing system and a third processing system (col. 3, lines 12-15 – Processing network 12 may consist of a plurality of interconnected processors).

The language “for polling the first data processing system to transfer travel arrangement information to a second data processing system and a third data processing system is the intended use of the processing system. A recitation of the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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The system in Lynch is fully capable of transferring data to a plurality of processing systems.

The fact that the data processing systems are identified as a central reservation system and a flight data server is non-functional descriptive data, not structurally related to the structure. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (US 2002/0156661) (hereinafter referred to as Jones) in view of Among et al (US 2003/0110063) (hereinafter referred to as Among).

Referring to Claims 1 and 13:

Jones discloses a method and system for making travel arrangements using a computer network, comprising:

receiving travel parameters associated with a desired travel option (*Figure 2A (200) Receive Trip Parameters [0031], [0039] travel parameters include..*);

generating a listing of one or more travel arrangements in accordance with the travel parameters ([0030-0031]; *Figure 7 (700) review itinerary [0056]*), said listing including pricing information associated with the travel parameters (*Figure 3B Available flights on 9/7 and prices shown, [0045] Fig. 3b also shows available flights and their times and prices, (Figure 8B) the Fare for this itinerary is \$578 per person, \$1156 for 2 passengers*); and

displaying the listing of the one or more travel arrangements ([0031] *the travel system sends display data to a display located at the user's site for displaying travel options, [0045] Figures 3b-3c show example screen displays presented on display 106, Figure 7 (700) and [0056] Once the itinerary is complete, RCS 128 sends display data to presentation program 108 which in turn displays the itinerary for the user to review (step 700); Figure 8B and Figure 8D*).

Jones does not disclose determining whether the user is a direct customer or a travel agent.

However, Among discloses a step of determining (login) who the user is, determining if a passenger is identified as qualified for special pricing and automatically applying a rate if qualified (Figure 4 step 407 If passenger identified as qualified for special pricing – rate is automatically applied), a customer information database (106) which includes client and customer information and identification [0039], allowing for tracking of sales by an individual or by an entity, sending confirmation messages to travel agent 605 and the buyer (606) and the ability to enroll online in an incentive program and receive special access to the site via the login and password which

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includes a travel agent [0052] (Figure 1 (102)(101) login, Figure 3 (300) customer inputs: resident state, name, other login information; page 5 [0052]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the login teachings of Among with travel planning disclosure of Jones since, by identifying the user, the travel planning method and system of Jones can access special pricing information, any incentives, and commission payments that may be available to the user, thus affecting the price of any reservation, and also allows for tracing of sales by an individual or by an entity and aids travel agents in managing commission payments.

Furthermore, the fact that the user is a direct user or a travel agent in the claim language above is determined to be non-functional descriptive data, not structurally related to the steps or the structure. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claims 2 and 14:

Jones discloses a method and system wherein said listing includes a plurality of room accommodations, pricing information for the plurality of room accommodations. (Fig. 2A (230) Invoke Hotel Decision Support System, Fig. 4A (400) Hotel subsystem, [0008] traveler's itinerary is generated interactively with a user by selecting hotels [0030], page 3 [0047]).

Jones does not disclose the pricing information for the plurality of room accommodations *with one or more categories of airfare*. The Examiner is reading this to mean that the component prices of a package are shown, e.g., a total package price includes the cost of a room at a certain dollar amount and the cost of a flight at a specified dollar amount.

Among discloses the individual package component prices (Fig. 4 (401-406) which includes airline price data and hotel (accommodation) price data [0045] after the buyer has provided parameter information for components 400 and selected desired components 401, suboptions are generated and priced by the server 105 for selected components from the airline, hotel, car and other travel products/services price database).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the package components taught in Among with the travel planning disclosure of Jones since this allows the customer to see that the customer is getting a better discount by booking flights and accommodations together in a package as opposed to making several independent reservations.

Referring to Claims 3 and 15:

Jones discloses a method and system wherein said method further comprises displaying images associated with the plurality of room accommodations, in response to selection of said plurality of room accommodations (Fig. 4A (420) send display data with amenities, views, descriptions, Figure 4B and [0047]).

Referring to Claims 4 and 16:

Jones discloses a method and system wherein said travel parameters include accommodation name, arrival date, departure date, departure location, and number of guests (Fig. 4A, [0030-0031] destination time, site , and an origination site [0039] origination airport, origination city, arrival date and time, duration, required return time).

The fact that the travel parameter includes whether children are allowed is determined to be non-functional descriptive data, not functionally related to the steps or method. This data does not modify the steps of the method nor the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, it is old and well known to include all kinds of information in the parameter when making reservations, such as smoking preferences, seating preferences on the airline, whether hotels allow pets, whether they have swimming pools, or conference rooms, etc.

There for it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the data indicating whether children are allowed so that families with children will know not to book with hotels and restaurants that do not allow children and people who do not have children and prefer not to be around children can book at a hotel or restaurant that does not allow children.

Referring to Claims 5 and 17:

Jones discloses generating a travel itinerary, including flight information, hotel information and ground transportation [0007]. Jones does not disclose a method and system wherein said listing indicates unavailability information associated with the travel arrangement, said unavailability information including dates of unavailability.

However, Among discloses a method and system wherein the packaging mechanism checks for availability and unavailability of inventory and wherein a third party can adjust availability and price of said options in accordance with inventory levels ([0021] an inventory monitor that classifies said at least one suboption as one of available and unavailable [0022] adjust availability and price of the plurality of options in accordance with inventory levels [0039] vendors may close out certain dates that are not available for sale by clicking on a specific date on a calendar displayed on the vendor interface, close out a specified range of dates, or offer a “block” of rooms at a certain price).

Furthermore, the it is old and well known for resort or reservation information to provide dates of unavailability or dates of reduced rates or dates when rates do not apply when providing information to a customer. For example, during the summer months, rates at beach resorts are higher than during the winter months. If a resort routinely handles a conference or event, then the resort will be unavailable to book reservations at that time if all of the rooms have been reserved. Reservation information, such as advertisements, brochures, etc. often provide this information along with pictures of the resort, cabin, etc and prices and other information. The

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information is usually presented with a disclaimer that rates will not apply during certain time periods or during certain times of the year.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the inventory monitoring taught by Among with the travel planning disclosure of Jones so as to prevent considering a booking for a reservation that is not available.

Referring to Claims 6 and 18:

Jones discloses a method and system that shows available flights and their times and flights. Neither Jones nor Among disclose a method and system wherein said pricing information associated with the one or more categories of airfare is provided without regard to availability of seating.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the travel planning disclosure of Jones and the inventory packaging of Among the ability to provide pricing information without regard to airfare so as to allow a user to obtain a sense of the market prior to beginning the process of making travel arrangements or planning for a vacation.

Furthermore, the data in the listing is determined to be non-functional descriptive data, not structurally related to the steps or the structure. The type data in the listing does not alter how the steps of the method are performed or the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claims 7 and 19:

Jones discloses a method or system further comprising accessing an associated computer network to determine the availability of seating after selection of a listed travel arrangement [0044-0045] the user may selected a preferred flight and seat, Figure 3C shows a picture of the plane so that the user may select a set).

Referring to Claims 8 and 20:

Jones discloses a method and system wherein said method further comprises displaying one or more flight options after the associated computer network is accessed (Figure 3A (340), Figure 8B, Figure 8D [0041-0045])

Referring to Claims 9 and 21:

Jones discloses a method and system wherein said displayed one or more flight options includes an indication a limited flight availability (Fig. 3B) Available Flights).

Referring to Claims 10 and 22:

Jones discloses a method or system wherein the method and system further comprises displaying price information (Figure 3B) and different price information associated with the number of persons (Figure 8B adjustments to fare for number of persons).

Jones does not disclose adjusted price information associated with the travel arrangements.

However, Among discloses a method and system further comprises displaying price information and adjusted price information associated with the travel arrangements (Figure 4 (407) Special pricing- rate is automatically applied [0045] [0052])

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the adjustments taught in Among with the travel planning disclosure of Jones so as to allow the user to see the saving from any special rate adjustment, to provide information on commission payment, and to provide a comparison for the user as to alternative options, i.e., whether using a travel agent increases the cost and if so, by how much.

Referring to Claims 11 and 23:

Jones discloses a method and system wherein said travel parameters include departure date and departure location, wherein dates associated with the airfare are determined in accordance with the departure date and departure location ([0039]).

Referring to Claims 12 and 24:

Jones discloses a method and system further comprising generating a confirmed travel arrangement without receipt of payment for the travel arrangement (Figure 7, [0056]).

Referring to Claims 25-27:

Jones discloses a system with a first data processing system (travel computer (120), data processing system (50)) for receiving travel parameters and generating a listing (itinerary) [0033-0039], a database for storing a plurality of travel arrangements

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(140), a polling computer (114) for transferring data to a central reservation system (130) (CRS) [0037] and a flight data server (116) ([0034-37] the travel system 114 include an air transportation subsystem (ATS) 116).

Referring to Claim 28:

Jones discloses a method for making travel arrangements upon request by a user of a computer network, the method comprising:

receiving travel parameters associated with a desired travel option (*Figure 2A (200) Receive Trip Parameters [0031], [0039] travel parameters include..*);

generating a listing of one or more travel arrangements in accordance with the travel parameters (*[0030-0031]; Figure 7 (700) review itinerary [0056]*, said listing including pricing information associated with the travel parameters (*Figure 3B Available flights on 9/7 and prices shown, [0045] Fig. 3b also shows available flights and their times and prices, (Figure 8B) the Fare for this itinerary is \$578 per person, \$1156 for 2 passengers*); and

displaying the listing of the one or more travel arrangements (*[0031] the travel system sends display data to a display located at the user's site for displaying travel options, [0045] Figures 3b-3c show example screen displays presented on display 106, Figure 7 (700) and [0056] Once the itinerary is complete, RCS 128 sends display data to presentation program 108 which in turn displays the itinerary for the user to review (step 700); Figure 8B and Figure 8D*).

generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relation to a

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net amount of money due from the user, *(Figure 7 (700) [0056] once an itinerary is complete, RCS 128 sends display data to presentation program 108 which in turn display the itinerary for the user to review, Figure 3B).*

Jones does not disclose determining whether the user is a direct customer or a travel agent or forwarding, to a tour operator's reservation system, the confirmed travel arrangements or wherein, when the user is a travel agent, the amount of money due is reduced by an amount of an agency commission.

However, Among discloses a step of determining *(login)* who the user is, determining if a passenger is identified as qualified for special pricing and automatically applying a rate if qualified *(Figure 4 step 407 If passenger identified as qualified for special pricing – rate is automatically applied)*, a customer information database (106) which includes client and customer information and identification [0039], allowing for tracking of sales by an individual or by an entity, sending confirmation messages to travel agent 605 and the buyer (606) and the ability to enroll online in an incentive program and receive special access to the site via the login and password which includes a travel agent [0052] *(Figure 1 (102)(101) login, Figure 3 (300) customer inputs: resident state, name, other login information; page 5 [0052])*.

Among further discloses in addition to sending confirmation to the vendors 602, a confirmation message is also sent to any travel agent 606 that booked the package and to the buyer [0051].

Among discloses an invention wherein the travel agents can manage commission payment [0052].

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the login teachings of Among with travel planning disclosure of Jones since, by identifying the user, the travel planning method and system of Jones would have access to information about special pricing, incentives, and commission payments that may be available to the user, thus allowing for the user to receive the special pricing, and also allowing for the tracing of sales by an individual or by an entity which would aid travel agents in managing commission payments. .

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine sending a confirmation message to any travel agent, vendor or buyer taught in Among with the travel planning disclosed in Jones for the purpose of providing verification that the reservation was made.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the commission payment taught in Among with the travel planning disclosed in Jones to allow for travel agents to manage and receive their commission payments and for the tracking and reporting of sales.

Furthermore, the fact that the user is a direct user or a travel agent in the claim language above is determined to be non-functional descriptive data, not structurally related to the steps or the structure. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Response to Arguments

6. Applicant's arguments filed September 2, 2005 and October 25, 2005 have been fully considered but they are not persuasive.

I. The rejection of Claims 1-10 under 35 USC section 112, second paragraph, has been withdrawn.

II. The rejection of Claims 1-10 under 35 USC Section 101 is withdrawn.

III. The rejection of Claims 13-24 under 35 USC Section 101 is withdrawn.

IV. Claims 1-10 and 25-26 are rejection under 35 USC Section 102(b) as being anticipated by Lynch.

Contrary to the applicant's assertion that Lynch does not teach or suggest a means for determining whether the user is a direct customer or a travel agent, the Examiner respectfully disagrees.

Lynch discloses that system 10, under the control of decision engine module 16, determines the identify of the traveler, the business entity which employs the traveler, and the travel agency of which the individual is a customer (*Figure 1 Decision Engine (16) Fig. 3 (106) Determine traveler, Business Entity and Agency Association, column 5, lines 31-35 – at block 106, in response to the travel request information, system 10 under the control of decision engine module 16 determines the identity of the traveler, the business entity which employs the traveler (if applicable), and the travel agency of which the individual is a customer (if applicable).*

Applicant admits that in step 106 the system of Lynch determines the traveler, business entity and agency association (page 18, last paragraph). The applicant argues that the system never states that the user is a direct customer or a travel agency. Applicant then states that because each of independent claims 1 and 25 recite the feature of determining whether the user is a direct customer or a travel agent, and because Lynch does not disclose this, applicant submits that each of these claims is allowable over Lynch. Given the broadest reasonable interpretation of a direct customer, can a traveler not be a direct customer?

The applicant further states that the feature of determining whether the user is a direct customer or a travel agent provides the invention with the advantage that the reservation system can tailor the information to be provided in the listing based on whether the user is a direct customer or a travel agent (page 17, second paragraph). For the applicant's invention to be able to do this, the applicant must incorporate this into the claim language. There is nothing in the claim language that suggest that the information that the user is a direct customer or a travel agent is used in the generation of the list. The claim language has the list generated in accordance with the travel parameters. The travel parameters are associated with the desired travel option. The applicant never uses the information of whether the user is a direct customer or travel agent in the claim language to generate the list.

As for applicant's arguments on page 19 that there is no disclosure in Lynch to suggest that there is ever the case that an individual can use Lynch's system without the assistance of a travel agent, the Examiner's position is, even if this were to be the

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case, the applicant's claim language does not preclude all of the transaction being made with the assistance of a travel agent.

Applicant then argues that Lynch fails to disclose a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information.

First, the applicant is reminded that claims 1 and 25 are directed to a system. Therefore, while features of an apparatus may be recited either structurally or functionally since claims directed to an apparatus/system must be distinguished from the prior art in terms of structure rather than function.

Lynch discloses a means for generating a listing of one or more travel arrangements in accordance with the travel parameters (*Decision engine module (16) - col. 3, lines 16-21 Decision engine module 16 functions to receive travel request information, such as a travel itinerary, input into system 10 and, in response, determines a preferred travel plan*). Given the broadest reasonable interpretation, the Examiner interprets a travel itinerary as a listing of one or more travel arrangements in accordance with travel parameters. The fact that the listing includes pricing information would be considered non-functional descriptive data that is not structurally related to the system. The structure of the system would be the same regardless of whether the listing is called a listing or an itinerary or whether the listing includes pricing information. Lynch has a means for generating a listing/itinerary and a means for displaying the listing. The data in the listing is non-functional descriptive data. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability,

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see *In re Gulack*, 703 F 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

As for applicant's arguments as to claims 2-12, 26 and 27, the Examiner disagrees with the applicant's position that the data in the claim language defines structure. While Lynch discloses the travel request information including, for example, the name of a customer (individual and/or business entity), the time and dates of travel and types of travel services needed (e.g., airline flight, hotel automobile rental, etc.), Lynch does not explicitly disclose a system wherein the listing includes a plurality of room accommodations and pricing information, wherein said listing includes information relating to whether children are allowed, wherein said listing indicates unavailability information, or wherein pricing information is provided. However, as stated in the rejection above, Lynch displays listings in the form of itineraries and the data in the listings is determined to be non-functional descriptive data, not functionally interrelated with the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, an apparatus must be distinguished from the prior art in terms of structure rather than function alone (MPEP 2114). The system in Lynch is fully capable of processing and displaying this type of data as is indicated by the language "*the travel request information can include, for example,*" and the *etc.* at the end of the listing of services, indicating that the listing is not all inclusive.

As for applicant's arguments that Lynch does not disclose second and third data processing systems, the applicant is directed to col. 3, lines 12-14 wherein it is disclosed that processing network 12 may consist of a plurality of interconnected processors. Applicant is also directed to the discussion in the rejection.

V. Claims 1-27 are rejected under 35 USC section 103(a) as being unpatentable over Jones in view of Among.

Applicant argues that Among does not disclose determining whether the user is a direct customer or a travel agent. The Examiner respectfully disagrees.

As discussed in the rejection above, Among discloses a step of determining (*login*) who the user is, determining if a passenger is identified as qualified for special pricing and automatically applying a rate if qualified (Figure 4 step 407 If passenger identified as qualified for special pricing – rate is automatically applied), a customer information database (106) which includes client and customer information and identification [0039], allowing for tracking of sales by an individual or by an entity, sending confirmation messages to travel agent 605 and the buyer (606) and the ability to enroll online in an incentive program and receive special access to the site via the login and password which includes a travel agent [0052] (*Figure 1 (102)(101) login, Figure 3 (300) customer inputs: resident state, name, other login information; page 5 [0052]*).

Furthermore, the fact that the user is a direct user or a travel agent in the claim language above is determined to be non-functional descriptive data, not structurally

related to the steps or the structure. Once the user is identified, this information is not used in the claim language. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in the secondary (Among) reference [0052].

The applicant's argues that the combination changes the principle operation of the prior art invention being modified. The Examiner disagrees with this assertion. First of all, the reference being modified is not Among, but Jones. Among is being combined with Jones. Secondly, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Among is pertinent to the particular problem with which the applicant is concerned, i.e., determining the identify of the user.

Among then uses the identification of the user to identify special pricing, incentives and commission payments related to the user.

The applicant argues that neither Jones nor Among teach or suggest the claim feature that the listings provide information relating to whether children are allowed as referenced in claims 4 and 18 and because the combination of references fail to teach or suggest this, that the rejection is in error.

As stated in the rejection above, the fact that the travel parameter includes whether children are allowed is determined to be non-functional descriptive data, not functionally related to the steps or method. This data does not modify the steps of the method nor the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, it is old and well known to include all kinds of information in the parameter when making reservations, such as smoking preferences, seating preferences on the airline, whether hotels allow pets, whether they have swimming pools, or conference rooms, etc.

As for applicant's argument that neither Jones or Among teach pricing information with regard to availability of seating, the applicant is directed to the discussion with the rejection as to claims 6 and 18 wherein the Examiner stated the data in the listing is determined to be non-functional descriptive data, not structurally related to the steps or the structure. The type data in the listing does not alter how the

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steps of the method are performed or the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

As for claim 7 and 19, applicant argues that neither Jones nor Among teach or suggest the feature of accessing an associated computer network to determine the availability of seating, after selection of a listed travel arrangement. However applicant is directed for Figure 3C in Jones and paragraphs [0042-0045].

As for claims 12 and 24, Jones discloses the claimed feature of generating a confirmed travel arrangement without a receipt of payment. See Figure 7.

Motivation to combine Jones with Among is found in the Among reference as stated above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

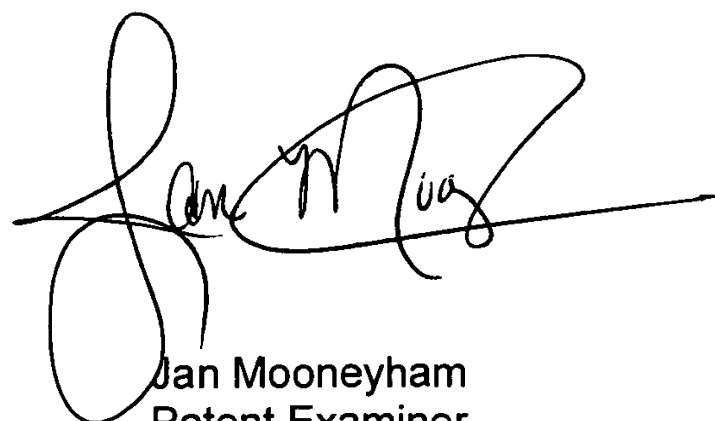
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janice A. Mooneyham whose telephone number is (571) 272-6805. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jan Mooneyham
Patent Examiner
Art Unit 3629